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SUBJECT: JUSTICES DEFANG LY'S "TRUTH INVESTIGATION COMMISSION"

Classified By: AIT Director Douglas Paal, Reason: 1.4 (B/D)

¶11. (C) Summary: The Council of Grand Justices ruled on December 15 that key portions of the statute establishing a commission to investigate the March 19 shooting of President Chen Shui-bian were unconstitutional. Although the "Truth Investigation Commission", established by the Pan-Blue majority in the Legislative Yuan (LY), will be allowed to continue working, the ruling strips it of most of its powers.

The Executive Yuan (EY) praised the ruling, saying it vindicated government agencies' refusal to cooperate with the commission's investigation. The KMT's initial reaction was hostile, but it quickly moderated its tone and began to discuss possible modifications in the statute creating the Commission. The People First Party (PFP), however, derided the decision, claiming it was the result of Pan-Green manipulation of the judiciary, and threatened a "radical approach" to dealing with the situation. It remains to be seen whether the ruling will encourage the two sides to work together to create a mutually acceptable investigative commission. End Summary.

The "Truth Investigation Commission": A Most Partisan Birth

¶12. (C) The Pan Blue-dominated LY passed a statute on August 24 establishing a special "Truth Investigation Commission" (TIC) to investigate the March 19 shooting of President Chen Shui-bian and Vice President Annette Lu. Many in the Pan-Blue camp claim the shooting was staged to help Chen garner sympathy votes and thus unfairly win the election. The statute gave the commission nearly unlimited powers of investigation and stipulated that its members be appointed by the political parties in proportion to their share of LY seats. The Pan-Green camp, calling the bill unconstitutional, fought it from the outset. The DPP-dominated EY effectively vetoed the TIC bill in September by returning it to the LY for reconsideration. After Pan-Green legislators failed to prevent the Pan-Blue LY majority from overturning this "veto," they petitioned the Council of Grand Justices to strike down the law as unconstitutional. Meanwhile, the Pan-Greens refused to nominate members to the Commission, and the EY directed government agencies not to turn over documents or otherwise cooperate with the TIC investigation.

Commission's Omnipotence Ruled Unconstitutional

¶13. (C) The Council of Grand Justices, Taiwan's highest judicial body, ruled on December 15 that some key portions of the TIC statute were unconstitutional, notably two articles giving the Commission unprecedented prosecutorial and investigative powers. One article stipulated that no individual or government body could invoke any law exempting itself from being subpoenaed to give testimony, handing over documents, or otherwise assisting the Commission. Travel bans and fines would be imposed on those who refused to cooperate. The other article further authorized the Commission to try any alleged suspects before a high court and demand a retrial if the court's decision was found to contradict the Commission's findings. The Justices ruled that the TIC can continue working, but only after the statute has been amended, eliminating most of its enforcement powers.

Pan-Green Camp, EY Praise the Ruling

¶14. (C) Pan-Green officials praised the ruling, saying it vindicated government agencies' refusal to cooperate with the commission's investigation. EY spokesman Chen Chi-mai said he was "grateful for the constitutional interpretation delivered by the Council of Grand Justices" and demanded the Commission "immediately cease all operations." He added that "both President Chen and the Executive Yuan are eager to find the truth of the March 19 case . . . but the procedures must be constitutional and legal." He suggested that lawmakers of all parties consider forming commissions under the scope of the LY's existing constitutional powers to investigate other "cases of concern to the Taiwan people" in addition to the March 19 shooting. Chen specifically

mentioned several notoriously unsolved murders of dissidents during the KMT-imposed period of martial law.

KMT Reluctantly Willing to Abide by Ruling

15. (C) The KMT's reaction to the ruling was initially combative. Commission member Yeh Yao-peng stated that the commission was "legally constituted" and would continue operation. KMT spokesman Chang Jung-kung also expressed his immediate disappointment with the ruling, saying that the party "cannot accept the (Grand Justices') interpretation." By the next day, however, the KMT had begun to moderate its position. On December 16, LY Speaker Wang Jin-pyng announced that the Party would respect the ruling and would work with all parties to amend the statute so that the Commission could continue its investigation. Privately, however, the KMT has made it clear that it remains dissatisfied with the Council's decision. In a meeting with AIT Acting Director the same day (septel), Wang complained that the ruling effectively eliminated the Commission. Party Chairman Lien Chan, he said, had asked him to pass a message that the KMT would give up its objections to the USD 18 billion special defense procurement budget if AIT could convince the Democratic Progressive Party (DPP) to accept the existing TIC statute.

A Defiant PFP Threatens "Radical Approach"

16. (C) The KMT's Pan-Blue partner PFP, however, was more defiant. On December 15, after the ruling was announced, PFP caucus whip Liu Wen-hsiung questioned the impartiality of the Grand Council itself, saying "We are not surprised about the outcome, since the Commission is investigating Mr. Chen Shui-bian and the Grand Justices are named by Chen." He called on the Commission to continue its operations and urged "the public to refuse cooperation with the Grand Justices' interpretation." In response to the KMT's more moderate stance the following day, Liu threatened that the PFP had not ruled out a more "radical approach" to dealing with the situation, but did not elaborate what that might entail. Members of the commission separately issued a statement saying that the ruling contradicted the five-branch government system of the ROC Constitution, and may have sparked a constitutional crisis. PFP Legislator Chou Shi-wei suggested a constitutional amendment to eliminate the Control Yuan (CY), since its duties overlap with those of the Commission.

Comment: No Big Surprise

17. (C) The Council's ruling was not surprising, as parts of the original statute were widely viewed as contravening the Constitution. The real question was whether the statute would be struck down before or after the December 11 LY elections. The KMT's professed willingness to respect the ruling and consult with all parties suggests that, now that the elections are over, Commission legislation acceptable to all sides may now be possible. However, the reactions by EY Spokesman Chen, Lien Chan, and the PFP provide clear reminders that the TIC is as much political football as investigative body. All parties will continue to look for ways to exploit the March 19 shooting and the Commission to gain marginal advantage in Taiwan's highly acrimonious and evenly divided domestic political arena.

PAAL